

Redraft, CFEP Staff Study No. 16 (draft dtd 7 June 1955)*

(* In reading the text below, note that words underlined are new text recommended for insertion, words in parentheses are existing text which is recommended for deletion.)

Analysis of Problems and Deficiencies of Enforcement

The problems and deficiencies in the enforcement program may be placed into two categories -- one relating to the multilateral aspects, the other to the unilateral or bilateral phases. Strictly speaking, it is difficult to separate the two since activities in which we engage unilaterally cannot fail to have some effect on our multilateral relationships.

(A) Multilateral Problems and Deficiencies in Enforcement

(1) Negotiating Delays and Difficulties. (On the international side) The development of the enforcement program by CG/COCOM/CHINCOM has been achieved only with considerable negotiating delays and difficulties. Agreements on TAC and UK Transactions Controls were part of a quid pro quo for the August 1954 list reduction. Five months of additional negotiations were required before these controls actually were (implemented) instituted. The adequacy in practice of individual PC implementation of the controls and their impact on the patterns of East-West trade have yet to be determined, and the erection of equivalent controls in non-PCs is still in the negotiating stage.

(2) Non-Uniformity of Controls Among PCs. The systems of controls of the individual PCs inevitably are non-uniform inasmuch as they are elements of the legal-administrative framework of individual states. In spite of agreement upon common objectives in COCOM, the technicalities inherent in local customs regulations, licensing procedures and the like provide many opportunities for both real and assumed inequities in controls.

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The stimulus of private competition, national rivalries and divisive propaganda tend to magnify these essentially technical problems unduly to the general detriment of mutual confidence in a joint effort.

(3) Inadequate Legal Bases for Controls. Without adequate legal bases not only is it impossible to exercise satisfactory licensing controls, including the use of end-use checks and other precautionary measures, but it is also difficult to impose strong enough punitive action to deter violations of controls. Laws in force in some countries greatly restrict the normal collection of commercial intelligence. Although a generalization attempting to characterize the inadequacies of foreign administrative and legal systems with respect to trade control laws and regulations would not be meaningful, it would be correct to assert that the laws and regulations of the United States are markedly more useful in support of the economic defense program than are those of most other PCs. The availability of and the approval accorded to administrative (quasi-legal) sanctions in the United States exceed considerably their acceptance and utilization in other PCs.

(4) Lack of PC Enthusiasm for Enforcement. The lack of enthusiasm for the enforcement program is based on a number of factors. Possibly the most important of these is the (current) political climate prevailing in Europe at this time, which influences the attitudes of PC governments toward the entire control program. As the hope for coexistence grows, it can be expected that enthusiasm for the program will diminish. The interest of individual PCs in conducting an aggressive enforcement program is affected not only by the manifestations of change in the climate of the cold war which Bloc actions may intimate from time to time but also by the variant

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basic philosophies underlying the acceptance by each PC of a role in a multilateral trade control effort.

More specifically there are the following:

- a) Reluctance of some countries to adopt enforcement measures unless all interested countries adopt similar measures.
- b) Emphasis of foreign government economic agencies on trade promotion rather than trade control.
- c) Confidential nature of controls in some countries.
- d) Understaffing of enforcement agencies of foreign countries. Insufficient orientation of enforcement personnel re the objectives of the program and inadequate experience in handling multinational problems in coordination with other PCs.
- e) Reluctance of foreign enforcement personnel to discuss mutual problems with U.S. embassy officers. Lack of investigative initiative where local inadequacies may be brought to light.
- f) (Poor or unreliable) Inadequate intelligence information; (inability) difficulty (to investigate) of investigation (unevaluated) on the basis of limited (intelligence) information.

*(Additional problems arise from the non-uniformity of controls between PC's and from inadequate legal bases for such controls. Without

* This paragraph is recommended for deletion since it has been included and expanded upon in (2) and (3) above. The last sentence is recommended for deletion since it in general duplicates the points made in d) and e) above.

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adequate legal bases not only is it impossible to exercise satisfactory licensing controls, including the use of end-use checks and other precautionary measures, but it is also difficult to impose strong enough punitive action to deter violations of controls. A corollary problem is the frustration of the officials responsible for the implementation of controls caused by personnel shortages and other factors.)

(5) Technical Descriptions of Controlled Items Complicates Enforcement. The task of the enforcement official is made difficult by the detail and technical nature of the description of certain controlled items. The distinction between a controlled and uncontrolled item may depend upon a technical difference which the average enforcement official is not trained to recognize. There are inadequacies in existing and available instructional material for the use of enforcement officials in the various PCs.

(6) Professional East-West Traders. A sizeable number of professional East-West traders has always been available to the Bloc for the procurement of strategic commodities. They are experienced in commercial matters and possess an on-the-spot familiarity with East-West trade opportunities. Their ingenuity represents a constant challenge to the enforcement officials of the individual PCs.

(7) Inadequate Enforcement by PCs of Lists II and III. The utility of IL/II and IL/III controls is measurable directly by the adequacy and timeliness of the statistical reports which the PCs have agreed to make to COCOM. Having been forced to a recognition of prior inadequacies of their performance, the PCs agreed in COCOM in December, 1954 on a revised

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program to which adherence was promised. It was agreed that monthly statistics would be submitted on the movement of goods subject to controls. Specifically it was agreed to report on the issuance of export licenses for each item on I/Ls I, II, III, the Atomic Energy and the Munitions List for shipment to the European Soviet Bloc, Communist China and North Korea, and it was agreed to report similarly on export licenses issued for each item on the China Special List for shipment to Communist China and North Korea. Reports were to be submitted no later than two months after the end of the month reported on. It was agreed also that the monthly statistics should include information on the full cancellation of licenses, use of unallocated reserve, et al. It is premature to evaluate the adequacy of compliance with this revised program, but past experience indicates that constant insistence will be required to obtain these data.

Quantitative control (I/L II) has had a very limited success in practice. The quotas as now set frequently accommodate a desire to trade rather than reflect an effort to control. A looseness of interpretation and administration has permitted practically unrestricted shipments of certain I/L II commodities.

(8) The China Differential. Perhaps the most active and troublesome problem in the enforcement area is that caused by the differential level of controls over trade with the Soviet bloc in Europe and in Communist China. At the time of the 1954 List reduction the PCs agreed that the List changes would not be applicable to trade with China, that exports to the Soviet bloc (Europe) should not frustrate those covering trade with China, and exports to the Soviet bloc in Europe should not be approved

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if it was likely that they would be diverted to China. There has been little evidence of denial of exports under these circumstances. In fact, the quantity and value of known diversions to China via the European Soviet Bloc (Europe) and Western countries have been significant. Diversions of non-I/L I goods to China have been facilitated by the removal from licensing, except for direct shipment to China, of most I/L III and China Special List items and by the applicability of IC/DV to only Munitions, AE and I/L I and II items, and of TAC to only Munitions, AE and I/L I items.

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In spite of the first seven problems enumerated above, at present the multilateral enforcement system is, on balance, reasonably effective and justifies both the past efforts made by the United States on its behalf and further efforts of the same general character. (Of the problems referred to above only the last (relating to the differential level of controls) is a serious one.) Only the last problem, (8) The China Differential, at present is so serious as to represent a major disruptive element in the over-all controls system. The China embargo can be avoided legally by means of directing shipments to ostensible consignees in Eastern Europe. Forebearance to use this technique largely depends not upon tangible preventive measures but upon the nature of the subjective intent and will of the shipper and his government. (However with the) In view of general resistance by the PCs to any broad extension of controls (albeit small) plus the desire on the part of most PCs to reduce (the level of) China controls to the COCOM levels, it is most doubtful if we

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can obtain any tightening of enforcement measures applicable to China trade.) no effective means appears to be available to maintain the differential and at the same time to eliminate this technique of avoidance of direct controls. On the other hand, Bloc European ports are in a chronically crowded condition and available transportation by sea is not adequate to meet the demands made upon it. The necessity for Communist China to obtain embargoed goods indirectly, therefore, imposes an added burden both as respects the cost of securing the goods and the certainty of their arrival at the time and in the condition required. Our future course of action in this area is dependent on the outcome of the over-all review of security trade control policy, in particular that covering trade with China. It should be noted that the criteria for an evaluation of the importance of trade to China are not necessarily the same as those established for the 1954 review of controls relative to the European Soviet Bloc, and the enforceability of controls is directly related to the composition of the list of controlled commodities.

For the other problems, (1) - (7), we can (only) point to the PCs deficiencies as they occur and press for the small modifications required to effect improvements. To this end the exchanges of teams of technical experts initiated by the United States can go far to impress upon the PCs the importance which we attach to effective enforcement and provide an orientation for foreign government (of) relative to U.S. policies, standards and procedures.

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